CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1946-47

No. 1076 46

INTERNATIONAL SALT COMPANY, INCORPORATED, APPELLANT,

vs.

THE UNITED STATES OF AMERICA

No. 1208 62

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

INTERNATIONAL SALT COMPANY, INCORPORATED

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

FILED FEBRUARY 28, 1947—APRIL 4, 1947.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 1076

INTERNATIONAL SALT COMPANY, INCORPORATED, APPELLANT,

vs.

THE UNITED STATES OF AMERICA

No. 1208

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

INTERNATIONAL SALT COMPANY, INCORPORATED

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

INDEX

	Original	Print
Record from D. C. U. S., Southern District of New York	1	1
Praecipe for transcript of record—Appeal of International Salt Co.	2	1
Docket entries (omitted in printing)	6	
Summons	7	2
Complaint	9	3
Exhibit "A"—Form of lease agreement—Lixator	19	11
Exhibit "B"—Form of lease agreement—Saltomat	21	12
Answer	24	14
Plaintiff's request for admissions	33	20
Exhibit 1—List of lease agreements that vary in terms from printed form of lease agreement—Lixator	35	21
Photostatic copies of 50 lease agreements (omitted in printing)	36	

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 9, 1947.

—1009

	Original	Print
Record from D. C. U. S. Southern District of New York—Continued		
Defendants' admissions	93	23
Notice of motion for summary judgment	95	24
Motion of summary judgment	96	24
Stipulation dismissing complaint as to defendants Edward L. Fuller and Hervey J. Osborn	98	25
Opinion, Rifkind, J.	100	25
Judgment	117	36
Assignments of error—International Salt Co.	123	39
Petition for appeal—International Salt Co.	127	42
Order allowing appeal—International Salt Co.	129	42
Citation and service (omitted in printing)	131	
Clerk's certificate (omitted in printing)	133	
Praecipe for transcript of record—Appeal of United States of America	135	43
Petition for appeal—United States of America	141	44
Assignment of errors—United States of America	142	45
Order allowing appeal—United States of America	144	46
Citation and service (omitted in printing)	145	
Clerk's certificate (omitted in printing)	147	
Statement of points to be relied upon and designation of record—International Salt Co.	148	47
Stipulation as to printing of record	150	47
Statement of points to be relied upon and designation of record—United States of America	153	48
Order noting probable jurisdiction	156	50

[fols. 1-2]

IN THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF NEW YORK

Civil No. 32-310

UNITED STATES OF AMERICA, Plaintiff,

vs.

INTERNATIONAL SALT COMPANY, INCORPORATED, et al., Defendants

PRAECIPE FOR TRANSCRIPT OF RECORD

To the Clerk of the United States District Court of the Southern District of New York:

You are hereby requested to make a transcript of record to be filed in the Supreme Court of the United States pursuant to an appeal allowed in the above entitled case, and to include in such transcript the following papers and exhibits:

A: DOCKET ENTRIES

1. The summons, dated July 26th, 1945;
2. The complaint and exhibits thereto annexed, dated July 26th, 1945;
3. Answer, dated September 14th, 1945;
4. The plaintiff's request for admissions under Rule 36, dated May 21, 1946, together with all exhibits thereto annexed;
5. The defendants' notice of admissions pursuant to Rule 36;
6. The notice of motion and the motion for summary judgment, each dated July 2nd, 1946;
7. The opinion of the Honorable Simon H. Rifkind, filed November 20th, 1946;
8. The final judgment, entered December 27th, 1946;

[fol. 3] 9. Consent to dismissal of the complaint without prejudice as to defendants Edward L. Fuller and Harvey J. Osborn, dated January 17th, 1947;

10. The petition for appeal herein, dated January 22, 1947;
11. The appellant's assignment of errors;

12. The statement as to the jurisdiction of the Supreme Court to review the judgment in question, filed pursuant to Rule 12(1) of the Rules of the Supreme Court;

13. The order allowing appeal;

14. The citation on appeal, dated January 23, 1947, directed to the United States of America, with proof of service thereof;

15. The statement directing attention of the appellee to the provisions of Rule 12(3) of the Rules of the Supreme Court, together with proof of service thereof and proof of service of a copy of a petition for appeal, the order allowing appeal, the assignments of errors and the statement as to the jurisdiction of the United States Supreme Court to review the judgment in question;

[fols. 4-6] 16. This praecipe, and proof of service.

17. Clerk's certificate.

Dated: January 28, 1947.

Putney, Twombly, Hall & Skidmore, by (S.) Lemuel Skidmore, Attorneys for Defendant Appellant International Salt Company, Incorporated.

[fols. 7-8] IN DISTRICT COURT OF THE UNITED STATES

[Title omitted]

SUMMONS

To the above named Defendants:

You are hereby summoned and required to serve upon Lawrence S. Apsey, Spec. Ass't to the Att'y Gen'l.; Maurice Godin, Spec. Att'y., plaintiff's attorney's whose address Dept. of Justice, Antitrust Division, 30 Broad Street, New York, New York, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

(Signed) George J. H. Follmer, Clerk of Court, by ——, Deputy Clerk. (Seal of Court)

Date: 7/26/45.

[fol. 9] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil No. 32-310

UNITED STATES OF AMERICA, Plaintiff

v.

INTERNATIONAL SALT COMPANY, INCORPORATED, EDWARD L. FULLER and HERVEY J. OSBORN, Defendants

COMPLAINT—Filed July 26, 1945

[File endorsement omitted]

[fol. 10] The United States of America, by its attorneys, acting under the direction of the Attorney General of the United States, complains and alleges upon information and belief:

I

Jurisdiction and Venue

1. This complaint is filed and these proceedings are instituted under Section 4 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", commonly known as the Sherman Antitrust Act, and under Section 15 of the Act of Congress of October 15, 1914, c. 323, 38 Stat. 730, as amended, commonly known as the Clayton Act, in order to prevent and restrain continuing violations by the defendants, as hereinafter alleged, of Section 1 of the Sherman Antitrust Act, and of Section 3 of the Clayton Act.

2. The defendants maintain executive offices and transact business within the Southern District of New York. The violations of law hereinafter described have been and are being carried out in part within the Southern District of New York.

[fol. 11]

II

Defendants

3. The International Salt Company, Incorporated (hereinafter sometimes referred to as International Salt), a cor-

poration organized and existing under the laws of the State of New Jersey, with its executive offices at 475 Fifth Avenue, New York, New York, is made a defendant herein. International Salt is the largest producer of salt for industrial and domestic uses in the United States.

4. Edward L. Fuller, who is and was at all times hereinafter mentioned president and a member of the board of directors of International Salt, is made a defendant herein.

5. Hervey J. Osborn, who is and was at all times hereinafter mentioned executive vice president and secretary, and a member of the board of directors of International Salt, is made a defendant herein.

III

Nature of Trade and Commerce

6. The defendant International Salt is engaged in the business of manufacturing and supplying salt for industrial, agricultural, medicinal and home purposes. It is also engaged in the manufacture and distribution of a machine known as the Lixate Process Dissolver (hereinafter sometimes referred to as the Lixator), which is manufactured or claimed to be manufactured by defendant International Salt under U. S. patent No. 2,281,140, granted on April 28, 1942 and now owned by said defendant. Defendant International Salt is also engaged in the manufacture and distribution of a machine known as the Saltomat Automatic Salt Depositor (hereinafter sometimes referred to as the Saltomat), which is manufactured or claimed to be manufactured by said defendant under U. S. patent No. 2,308,189, granted on January 12, 1943, and now owned by said defendant.

[fol. 12] 7. The aforesaid Lixator dissolves rock salt, a raw material sold by defendant International Salt and other companies, into a salt brine solution. This brine is an essential part of the manufacturing processes of many industries, as, for example, the meat packing, refrigeration, tanning, canning, dyeing, soap making, steel, laundry, etc. industries.

8. The aforesaid Saltomat is used as a dispenser of salt tablets by persons in factories, offices and homes where the

heat is intense. These salt tablets, sold by defendant International Salt and other companies, serve to replace some of the salt lost by the body through perspiration because of heat.

9. Defendant International Salt manufactures the above machines and rock salt and salt tablets suitable for use therein, at plants located in New York, Michigan and Louisiana and ships in interstate commerce large quantities of its said machines, rock salt and salt tablets made in those plants to customers throughout the United States. In 1944, defendant International Salt sold and shipped in interstate commerce approximately 119,000 tons of salt having a value of approximately $500,000 to be used in connection with the aforesaid Lixator and Saltomat. Salt of the same kind and quality as that made and sold by the defendant International Salt, which is equally suitable for use in said Lixator and Saltomat, is and has been during all the times hereinafter mentioned, made, sold and shipped in interstate commerce by other salt companies in competition with the salt and salt tablets made and sold by the defendant International Salt.

IV

Unlawful Contracts

10. The defendants have continuously, during all the times herein mentioned, brought about, entered into and [fol. 13] maintained the illegal agreements hereinafter alleged, in restraint of the above described trade and commerce in rock salt and salt tablets among the several states of the United States, in violation of Section 1 of the Sherman Act and Section 3 of the Clayton Act, all as hereinafter set forth. The said restraint and the performance of the unlawful agreements hereinafter alleged are continuing and will continue unless the relief prayed for in this complaint is granted.

11. The defendants now are and have been for the past three years engaged in making and entering into lease agreements with various persons, at present more than 750, for the use of said Lixator, on a printed form, a copy of which is attached hereto as Exhibit A, and made a part hereof as though fully set forth herein. The defendants likewise are now and have been for the past two years en-

gaged in making and entering into lease agreements with various persons, at present approximately 100, for the use of the aforesaid Saltomat, on a printed form, a copy of which is attached hereto as Exhibit B with the same force and effect as though fully set forth herein.

12. The said form of lease agreement, Exhibit A, under which the use of the Lixator is and has been leased by the defendants to various persons as aforesaid, contains the following provisions, among others:

(a) In consideration of the rental to be paid by the lessee, defendant International Salt leases the Lixator to the named lessee for a term of five years, and thereafter from year to year at the nominal rental of $1 per year. The said lease is of indefinite term and duration.

(b) It is mutually agreed "that the said LIXATE Process Dissolver shall be used for dissolving and converting into brine only those grades of rock salt purchased by the Lessee from the Lessor at prices and upon terms and conditions hereafter agreed upon".

[fol. 14] (c) "If, at any time during the term of this lease a general reduction in price of grades of salt suitable for use in the said LIXATE Process Dissolver shall be made, said Lessee shall give said Lessor an opportunity to provide a competitive grade of salt at any such competitive price quoted, and in case said Lessor shall fail or be unable to do so, said Lessee, upon continued payment of the rental herein agreed upon, shall have the privilege of continued use of the said equipment with salt purchased in the open market, until such time as said Lessor shall furnish a suitable grade of salt at the said competitive price."

(d) If the Lessee "shall at any time discontinue purchasing its requirements of salt from said Lessor . . . said Lessor shall have the right, upon thirty days' written notice of intention to do so, to remove the said LIXATE Process Dissolver from the possession of said Lessee."

13. The said form of lease agreement, Exhibit B, under which the use of the Saltomat is and has been leased by the

defendants to various persons as aforesaid, contains the following provisions, among others:

(a) In consideration of the yearly rental to be paid by the Lessee, defendant International Salt leases the Saltomat to the named Lessee. The said lease is of indefinite term and duration.

(b) It is mutually agreed "that the said Salt Tablet Depositor (s) shall be used only in conjunction with Salt Tablets sold or manufactured by the Lessor, and that the Lessee shall purchase from the Lessor, or its agent, Salt Tablets for use in the Salt Tablet Depositor (s) at prices and upon terms and conditions hereinafter agreed upon."

[fol. 15] (c) The only provision in the lease agreement for any reduction in the price of lessor's salt tablets is as follows: "If, at any time during the term of this lease, a general reduction in Lessor's price of Salt Tablets suitable for use in the Depositor (s) shall be made, said Lessor shall provide said Lessee with Salt Tablets at a like price."

(d) If the Lessee should "at any time discontinue purchasing its requirements of Salt Tablets for Salt Tablet Depositor (s) from said Lessor, or its agent, . . . said Lessor shall have the right, upon ten days' written notice of intention to do so, to remove the said Salt Tablet Depositor (s) from the premises and/or possession of said Lessee."

14. The aforesaid lease agreements have been carried out in all respects and are now in full force and effect.

15. The rock salt and salt tablets made and sold by defendant International Salt for use in the aforesaid Lixator and Saltomat are unpatented articles.

16. The defendants have refused to grant licenses or other rights to other persons to manufacture or sell said Lixator or Saltomat and have refused to sell such machines or lease them free of the aforesaid restrictions.

17. In bringing about, maintaining and carrying out the aforesaid agreements with various persons, the defendants intended to, and did lessen competition in the sale of salt

and salt tablets for use in said Lixate Process Dissolver and Saltomat.

18. In bringing about, maintaining and carrying out the aforesaid agreements the defendants intended to and did prevent other manufacturers of salt and salt tablets suitable for use in said Lixator or Saltomat from selling their products to users of said machines in competition with defendant International Salt.

[fol. 16] 19. In bringing about, maintaining and carrying out the aforesaid agreements the defendants intended to and did prevent the users of said Lixator and Saltomat from purchasing salt and salt tablets suitable for use therein from any company except the defendant, International Salt, and on any prices or terms except those fixed by defendant, International Salt.

20. In bringing about, maintaining and carrying out the aforesaid agreements the defendants intended to and did suppress and restrain competition in the sale of salt and salt tablets by tying the use of the said unpatented, raw materials to the use of the aforesaid patented machines, which said tying agreements are in violation of Section 1 of the Sherman Antitrust Act and Section 3 of the Clayton Act.

21. The defendants Edward L. Fuller and Hervey J. Osborn have authorized, ordered or done some or all of the acts of defendant, International Salt, constituting the offenses herein complained of.

V

Effects of the Unlawful Contracts

22. Defendants by the aforesaid restrictive leases have substantially lessened competition in the sale of salt, rock salt and salt tablets to the aforesaid Lessees of Lixators and Saltomats. In 1944 the defendant, International Salt, sold approximately 119,000 tons of salt having a value of approximately $500,000 for use in said machines and by the aforesaid restrictive leases, the defendants have prevented all competition in the sale of salt for such use.

23. The illegal practices herein described have continued during the period of time herein mentioned and are continuing.

24. The effects of the said practices have not been dissipated but are continuing. Such effects will continue until competitive supply of salt to the aforesaid Lessees is restored and defendant's monopoly thereof brought to an end.

25. Lessees of the aforesaid machinery have already paid to defendant, in the form of initial rental, most if not all of [fol. 17] the reasonable cash value of said machinery, excluding from valuation thereof returns to defendants from the supply of salt to the Lessees. The said Lessees have been led to rely upon possession of the said machinery in the conduct of their business, which said machinery was made available to them in return for such initial rentals and in return for giving to defendant a monopoly in supply of salt to such Lessees. The effects of defendant's improper practices and its monopolistic position supported thereby would be aggravated if defendant should now remove all machinery from possession of said Lessees or should compel them to pay a second time the value thereof, or if the patents used by defendant to support its monopoly should, until competitive conditions are restored, be enforced against other consumers of salt who are not now Lessees from defendant.

Prayer

Wherefore, Plaintiff demands judgment as follows:

(1) That the aforesaid form lease agreements be adjudged and decreed unlawful and in violation of the Sherman Antitrust Act and the Clayton Act;

(2) That observances of the aforesaid tying clause in the form lease agreements alleged be perpetually enjoined;

(3) That the defendants and the officers, directors, agents, representatives of, and all persons and corporations acting or claiming to act on behalf of defendant International Salt, be perpetually enjoined from participating in, maintaining or carrying out the restrictions in the aforesaid form lease agreements, or from reviving or renewing the same, or from granting or claiming any rights giving effect thereto;

(4) That defendant International Salt, its officers, directors, agents, representatives and all persons and corporations acting or claiming to act on its behalf, be required to lease or sell to present Lessees the machines now

under lease to them at reasonable rental or price, with credit to each Lessee for all amounts already paid by it [fol. 18] for use of the machinery in excess of the reasonable cash value of the rental thereof and without attributing any value to the patents or to the supply of salt for use with such machinery;

(5) That the defendant International Salt, its officers, directors, agents, representatives, and all persons acting or claiming to act on behalf of International Salt, be enjoined from instituting or maintaining any action or other legal proceedings for the infringement of the patents hereinbefore referred to.

(6) That pursuant to Section 5 of the Sherman Antitrust Act, an order be made and entered herein requiring such of the defendants as are not within this District to be brought before the Court in this proceeding as parties defendant and directing the marshals of the districts in which they severally reside to serve summons upon them;

(7) That plaintiff have such other and further relief as the nature of the case may require and the Court may deem proper in the premises and that plaintiff recover the costs of this suit.

Dated: New York, New York, July 26, 1945.

(S.) Maurice Godin, Special Attorney.

(S.) Tom C. Clark, Attorney General. (S.) Wendell Berge, Assistant Attorney General. (S.) Herbert A. Berman, Special Assistant to the Attorney General. (S.) Lawrence S. Apsey, Special Assistant to the Attorney General. (S.) John F. X. McGohey, United States Attorney.

[fol. 19] EXHIBIT "A" TO COMPLAINT

Lease

.....

THIS INDENTURE, made this —— day of ——— 19—— between International Salt Company, Inc., of Scranton, Pa., hereinafter called the Lessor, and ..... of ..... hereinafter called the Lessee.

.....

WITNESSETH: That for and in consideration of the sum ——— Dollars, ($——) per year, payable yearly in advance for five years, said Lessor hereby leases to said Lessee one ——— inch diameter Lixate* Process Dissolver. After expiration of the said five year period the rental to be paid by said Lessee shall be at the rate of One Dollar ($1.00) per year.

It is mutually agreed the transportation charges on the Lixate* Process Dissolver from Detroit, Michigan, to destination are for the Lessee's account and are in addition to the rental basis mentioned herein.

It is further mutually agreed that the said Lixate* Process Dissolver shall be installed by and at the expense of said Lessee and shall be maintained and kept in repair during the term of this lease by and at the expense of said Lessee; that the said Lixate* Process Dissolver shall be used for dissolving and converting into brine only those grades of rock salt purchased by the Lessee from the Lessor at prices and upon terms and conditions hereafter agreed upon, PROVIDED:

If at any time during the term of this lease a general reduction in price of grades of salt suitable for use in the said Lixate* Process Dissolver shall be made, said Lessee [fol. 20] shall give said Lessor an opportunity to provide a competitive grade of salt at any such competitive price quoted, and in case said Lessor shall fail or be unable to do so, said Lessee, upon continued payment of the rental herein agreed upon, shall have the privilege of continued use of the said equipment with salt purchased in the open market, until such time as said Lessor shall furnish a suitable grade of salt at the said competitive price.

It is further mutually agreed: that the said Lixate* Process Dissolver is and shall continue to be the exclusive property of said Lessor and can not be sold, loaned or otherwise transferred to any other person or corporation without the written consent of said Lessor; that should said Lessee fail to pay promptly the aforesaid rental, or shall at any time discontinue purchasing its requirements of salt from said Lessor, or otherwise breach any of the terms and conditions of this lease, said Lessor shall have the right, upon thirty days' written notice of intention to do so, to remove the said Lixate* Process Dissolver from the possession of said Lessee.

In witness whereof, the parties have hereunto set their hands and seals, the day and year first above written.

Without Hopper.
With Hopper.

International Salt Company, Inc., Lessor, By ——
——, Lessee, By —— ——.

[fol. 21] EXHIBIT "B" TO COMPLAINT

International Salt Company, Incorporated

Scranton, Pa.

Lease

Memorandum of Agreement entered into this — day of —, 19— by and between International Salt Company, Inc., a corporation of the State of New Jersey (hereinafter called the Lessor), and —— —— (hereinafter called the Lessee):

Witnesseth: That for and in consideration of the sum of —— Dollars ($——) per year, payable yearly in advance, for one year or part thereof, said Lessor hereby leases to said Lessee Saltomat Automatic Salt Tablet Depositor(s), described as follows:

It is mutually agreed that the said Salt Tablet Depositor(s) is (are) to be delivered F. O. B. Lessee's Railroad Station, charges prepaid.

It is further mutually agreed that the said Salt Tablet Depositor(s) shall be installed and maintained in good con-

*Reg. U. S. Pat. Off.

dition during the term of this lease: that the said Salt Tablet Depositor(s) shall be used only in conjunction with Salt Tablets sold or manufactured by the Lessor, and that the Lessee shall purchase from the Lessor, or its agent, Salt Tablets for use in the Salt Tablet Depositor(s) at prices and upon terms and conditions hereinafter agreed upon, Provided:

If, at any time during the term of this lease, a general reduction in Lessor's price of Salt Tablets suitable for use in the Depositor(s) shall be made, said Lessor shall provide said Lessee with Salt Tablets at a like price.

It is further mutually agreed that Lessor shall be under no liability to anyone for injury resulting from said machine or the use thereof while it is in Lessee's custody or possession, and the Lessee agrees to hold Lessor harmless from any such claim of liability and all expense resulting therefrom or in connection therewith; that the said Salt [fols. 22-23] Tablet Depositor(s) is (are) and shall continue to be the exclusive property of said Lessor and cannot be sold, loaned or otherwise transferred to any person or corporation without the written consent of said Lessor; that should Lessee fail to pay promptly the aforesaid rental, or at any time discontinue purchasing its requirements of Salt Tablets for said Salt Tablet Depositor(s) from said Lessor, or its agent, or otherwise breach any of the terms and conditions of this lease, said Lessor shall have the right, upon ten days' written notice of intention to do so, to remove the said Salt Tablet Depositor(s) from the premises and/or possession of said Lessee.

In Witness Whereof, the parties have hereunto set their hands and seals, the day and year first above written.

International Salt Company, Inc., Lessor, by ——
——. —— ——, by —— ——, Lessee.

[fol. 24] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER—Filed September 17, 1945

Defendants, answering the complaint herein by Putney, Twombly, Hall & Skidmore, their attorneys,

1. Deny any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 1 of said complaint.

2. Deny each and very allegation contained in paragraph 2 of said complaint, except that they admit that the defendants maintain executive offices and transact business within the Southern District of New York.

3. Deny each and every allegation contained in paragraph 3 of said complaint, except that they admit that defendant, International Salt Company, Incorporated, is a corporation organized and existing under the laws of the State of New Jersey, with executive offices at 475 Fifth Avenue, New York, N. Y., and that said defendant is the largest producer of salt for industrial uses in the United States.

4. Deny each and every allegation contained in paragraph 6 of said complaint, except that they admit that defendant, International Salt, is engaged in the business of manufacturing and supplying salt for industrial, agricultural and home purposes and that it is also engaged in the manufacture and distribution of a machine known as the Lixate Process Dissolver, which is manufactured by defendant, [fol. 25] International Salt under United States patents now owned by defendant; and except that they further admit that defendant, International Salt, is engaged in the distribution of a machine known as the Saltomat Automatic Salt Depositor, which is manufactured under a United States patent granted on January 12, 1943, and now owned by said defendant.

5. Deny each and every allegation contained in paragraph 8 of said complaint.

6. Deny each and every allegation contained in paragraph 9 of said complaint, except that they admit that defendant,

International Salt, manufactures the Lixate Process Dissolver and rock salt suitable for use in said machine and salt tablets suitable for use in the Saltomat Automatic Salt Depositor at plants located in New York, Michigan and Louisiana, and ships in interstate commerce machines, rock salt and salt tablets so manufactured to customers in other States of the United St tes; and except that they further admit that salt in many respects similar to that made and sold by defendant, International Salt, is and has been during the times mentioned in the complaint made, sold and shipped in interstate commerce by other salt companies in competition with the salt and salt tablets made and sold by defendant, International Salt.

7. Deny each and every allegation contained in paragraph 10 of said complaint.

8. Deny each and every allegation contained in paragraph 11 of said complaint, except that they admit that defendant, International Salt, now is and has been for the past three years engaged in making and entering into lease agreements with various persons for the use of said Lixator, some of them on a printed form, a copy of which is attached to the complaint and marked "Exhibit A", and that the total number of leases of said Lixator now outstanding is more than 750, and except that they further admit that [fol. 26] defendant, International Salt is, now and has been for the past two years engaged in making and entering into such agreements with various persons for the use of the Saltomat, some of them on a printed form, copy of which is attached to the complaint and marked "Exhibit B", and that the total number of leases of said Saltomat now outstanding is approximately 100.

9. Deny each and every allegation contained in paragraph 12 of said complaint, except that they admit that defendant, International Salt, has during the past three years entered into agrements for the lease of the Lixator in the form attached to said complaint, marked "Exhibit A", to which form of agreement defendants beg leave to refer for the terms thereof.

10. Deny each and every allegation contained in paragraph 13 of said complaint, except that they admit that defendant, International Salt, has during the past three years entered into agreements for the lease of the Saltomat

in the form attached to said complaint, marked "Exhibit B", to which form of agreement defendants beg leave to refer for the terms thereof.

11. Deny each and every allegation contained in paragraph 14 of said complaint, except that they admit that lease agreements in the form of Exhibit A annexed to said complaint and in the form of Exhibit B annexed to said complaint, are now in effect.

12. Deny each and every allegation contained in paragraph 16 of said complaint, except that they admit that defendant, International Salt, has in some instances refused to sell the machines described as Lixator and Saltomat.

13. Deny each and every allegation contained in paragraphs 17, 18, 19, 20 and 21 of said complaint.

[fol. 27] 14. Deny each and every allegation contained in paragraph 22 of said complaint, except that they admit that in 1944, defendant, International Salt, sold approximately 119,000 tons of salt having an approximate value of $500,000, for use in said Lixator and Saltomat machines.

15. Deny each and every allegation contained in paragraphs 23, 24 and 25 of said complaint.

For an Affirmative Defense, Defendants Allege:

16. That the defendants in entering into agreements for the lease of the Lixator and Saltomat on the lease forms, copies of which are attached to the complaint, marked Exhibit A and Exhibit B respectively, had no purpose or intent to create a monopoly in the sale of rock salt or salt tablets or to restrain trade and commerce in such rock salt and salt tablets, but only to secure for defendant, International Salt Company, Inc., the opportunity to meet competitive prices in such rock salt and salt tablets, and the making of such leases did not in fact result in creating any monopoly or restraining trade or commerce in such products.

17. The defendant, International Salt Company, Inc., has in many instances during the period mentioned in the complaint sold Lixators outright where a customer has objected to leasing such machine, and without any restrictions whatsoever on the source from which the rock salt for use in such Lixator was to be purchased. In no case, as defend-

ants are informed and believe, has any of the defendants at any time refused to install a Lixator or Saltomat, because the customer objected to signing a lease on one of the printed forms, copies of which are annexed to the complaint, marked Exhibits A and B respectively. Moreover, in many instances lessees of the Lixator and of the Saltomat have purchased rock salt and salt tablets for use in such Lixator or Saltomat respectively from sources other than the defendant, International Salt Company, Inc., to the [fol. 28] knowledge of the defendants, and in no such instance have the defendants or any them removed, or attempted to remove or threatened to remove the machine from the possession of such lessee.

18. That by leasing the said machines rather than selling them outright, defendant, International Salt Company, Inc., is enabled to require the machine to be kept in good order and repair by the lessee and to have the machine inspected from time to time by its qualified engineer to determine its condition and whether it is functioning properly, thereby insuring to the customer a satisfactory operation of the machine and protecting the good-will of said defendant with said customer and with the trade.

19. That said Lixators are used by the lessees for the purpose of making brine from rock salt through a process owned and promoted by the defendant, International Salt Company, Inc., known as the "Lixate Process." In using such process it is of extreme importance that rock salt be used of a standard and uniform chemical analysis in order to assure a constant and dependable supply of brine of uniform quality and concentration. The rock salt produced at the mines of the defendant, International Salt Company, Inc., is produced after careful investigation of the salt deposit prior to the actual mining, so as to guarantee a grade of salt consistently high in sodium chloride content, with the result that the rock salt produced from said defendant's mines has an average sodium chloride content of 98.2% or higher. Defendants are informed and believe that the rock salt produced by other mining concerns does not run consistent in sodium chloride content and in many instances runs as low as 95% of sodium chloride. Rock salt of a lower sodium chloride content contains a greater amount of insoluble impurities which must be disposed of through the sludge disposal of the Lixator using defendant's Lixate

[fol. 29] Process. In distributing its Lixators, defendant, International Salt Company, Inc., advises its lessees as to certain fixed intervals at which the sludge disposal should be operated, these intervals being based on the chemical content and analysis of the rock salt produced by said defendant. If another salt with a lower sodium chloride content and with more impurities is used in such Lixator, it will require an alteration in the control of the sludge disposal, if the Lixator is to operate in a satisfactory manner. Moreover, the use of such impure salt will affect adversely the amount of concentrated brine produced by the Lixator. The successful operation of the Lixator, therefore, and of the defendant's Lixate Process used in producing brine from such machine is dependent on the use of rock salt produced by the defendant, International Salt Company, Inc., with its high sodium chloride content and fewer impurities.

20. The Saltomat machines distributed by the defendant, International Salt Company, Inc., as alleged in the complaint, are used to inject salt in specific and uniform quantities into canned products during the process of canning, the salt being put into the Saltomat machine in the form of salt tablets. The salt tablets manufactured by the defendant, International Salt Company, Inc., are manufactured from high purity evaporated salt made especially to meet the requirements of the canning industry. They contain, for instance, a minimum of calcium sulphate, an impurity which, when used in the processing of vegetables such as peas and beans, causes a hardening of the skin of the vegetable which is very objectionable to the consumer. Defendants are informed and believe that users of Saltomat machines distributed by defendant, International Salt Com- [fol. 30] pany, Inc., have a more successful experience with said machine if they use tablets made by defendant, International Salt Company, Inc., from salt produced by it which contains a minimum of impurities and is especially designed to meet the specifications of the canning industry.

21. Furthermore, in many instances where a stock of salt tablets is carried over by a customer from one canning season to the next, humidity in the storage warehouse will cause the tablets partially to dissolve or to become moist. Those next to the shipping containers in that event will adhere to the side of the container and unless protected

by a proper coating will pick up impurities such as small pieces of paper from the container. Defendant, International Salt Company, Inc., has overcome this problem by having the containers for its salt tablets made with a glazed interior surface so that the tendency of the salt tablets when moist to adhere to the side of the container has been practically eliminated.

22. Where salt tablets, not produced by defendant, International Salt Company, Inc., and containing impurities or foreign matter from the sides of the container, are used in a Saltomat machine, such impurities and foreign matter are introduced into the canned products in which the salt tablets are deposited, to the detriment of such products and this condition is normally not discovered until after the cans are opened by the ultimate consumer, at which time it is impossible for the canner to tell what salt tablets were used in the particular can. In such cases the blame will be attached to the defendant's machine with a corresponding loss of goodwill on the part of the defendant, International Salt Company, Inc.

23. The making of leases of the Lixator and Saltomat on the printed forms, copies of which are annexed to the com- [fols. 31-32] plaint, marked Exhibits A and B respectively, is valid and legal and does not violate any of the statutes mentioned in the complaint and is necessary for insuring the satisfactory operation of said machines by said defendant's customers and for the protection of the good will of the defendant, Internation Salt Company, Inc., with such customers, and with the trade in general.

Wherefore, defendants demand judgment against plaintiff dismissing the complaint herein, together with the costs and disbursements of this action.

Dated: New York, N. Y., September 14, 1945.

Putney, Twombly, Hall & Skidmore, By Lemuel Skidmore, Attorneys for Defendant.

[fol. 33] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

REQUEST FOR ADMISSIONS UNDER RULE 36 OF THE RULES OF CIVIL PROCEDURE—Filed May 22, 1946

The United States of America, plaintiff herein, by its attorneys, requests the defendant International Salt Company, Incorporated (referred to herein and in the complaint as International Salt) to make the following admissions for the purpose of this action only and subject to all pertinent objections which may be interposed at the trial.

I. That each of the following statements is true:

1. Defendant International Salt manufactures or claims to manufacture the Lixate Process Dissolver (referred to herein and in the complaint as the Lixator) under United States Letters Patent No. 1.892,333 (issued December 27, 1932) and No. 1.928.008 (issued September 26, 1933).

2. Defendant International Salt manufactures or claims to manufacture the Saltomat Automatic Salt Depositor (referred to herein and in the complaint as the Saltomat) under United States Letters Patent No. 2.308.188 (issued January 12, 1943).

3. Defendant International Salt has entered into and now has in full force and effect, 840 lease contracts relating to the Lixate Process Dissolver, each lease covering one such Lixator. 790 of said lease contracts were entered into on the printed form of lease contract attached to the complaint [fol. 34] as Exhibit A. 50 of said lease contracts vary in terms from the said printed form of lease contract; a true and correct copy of each of said 50 leases, together with a list showing the name of and the location of each lessee is attached hereto as Exhibit 1.

4. Defendant International Salt has entered into and now has in full force and effect, 73 lease contracts covering 96 Saltomats. Each of said lease contracts was entered into

on the printed form of lease agreement attached to the complaint as "Exhibit B."

Dated, May 21, 1946.

(S.) Robert C. Barnard, Special Assistant to the Attorney General.

(S.) J. C. Wilson, Special Assistant to the Attorney General.

Service of the foregoing Request for Admissions under Rule 36 is acknowledged and a copy received this 21 day of May, 1946

(S.) Putney, Twombly, Hall & Skidmore, Attorneys for International Salt Company, Incorporated.

[fols. 35-92] EXHIBIT I TO REQUEST

List of Leases of Lixate Process Dissolvers from International Salt Company as Lessor, To:

Name of Lessee	Lease Dated
1. Rosemary Manufacturing Company	March 2, 1942
2. New Braunfels Textile Mills	February 12, 1941
3. Sidney Blumenthal & Co. Inc	November 4, 1941
4. Laclede Packing Company	July 10, 1941
5. Lunchburg Hosiery Mills, Inc	October 10, 1940
6. Georgia Packing Company	March 18, 1943
7. American Cyanamid & Chemical Corporation	January 9, 1942
8. Original Fur Products Corp.	July 17, 1945
9. Schuster Woolen Co.	May 20, 1940
10. Sheffield Farms Co., Inc.	February 19, 1942
11. The Tobin Packing Co., Inc.	January 9, 1939
12. Armour and Company	January 20, 1939
13. Roegelein Packing Co. Inc.	July 8, 1942
14. Gregg Dyeing Company	December 28, 1936
15. American Finishing Company	May 19, 1941
16. Dyersburg Cotton Products, Inc.	April 21, 1937
17. A. C. Lawrence Leather Co.	September 25, 1942
18. A. C. Lawrence Leather Co.	October 2, 1942
19. A. C. Lawrence Leather Co.	April 12, 1944
20. Winslow Bros. & Smith Co.	April 24, 1942

Name of Lessee	Lease Dated
21. Salem Oil & Grease Company	March 6, 1945
22. Consolidated Laundries Corporation	March 15, 1940
23. American Finishing Company	November 8, 1939
24. Armour and Company	May 10, 1937
25. Armour and Company	April 23, 1941
26. Armour Fertilizer Works	July 17, 1941
27. Armour and Company	April 18, 1945
28. Consolidated Laundries Corporation	November 6, 1941
29. E. F. Houghton & Co.	January 25, 1937
30. Kreinberg & Krasny, Inc.	May 17, 1937
31. Krey Packing Co.	July 12, 1938
32. A. C. Lawrence Leather Co.	August 28, 1939
33. The H. H. Meyer Packing Co.	July 1, 1938
34. National Laundry	January 12, 1940
35. Board of Public Affairs (Versailles, Ohio)	February 16, 1937
36. The Rath Packing Co.	July 1, 1938
37. The Rath Packing Co.	July 1, 1938
38. Riverside Packing Co. Inc.	August 7, 1937
39. Sea Foam Laundry, Inc.	January 4, 1943
40. Southern Shell Fish Company, Inc.	March 31, 1936
41. Southern Shell Fish Company, Inc.	August 21, 1935
42. Snider Packing Corporation	May 28, 1941
43. The Sperry & Barnes Co.	July 7, 1941
44. The Sibley Manfg. Co.	March 23, 1936
45. West Kittanning Borough	December 5, 1941
46. The Neil House	June 15, 1936
47. Riverside & Dan River Cotton Mills, Inc.	September 12, 1941
48. Phoenix Mills	July 14, 1943
49. Mooresville Cotton Mills	January 9, 1945
50. Chatham Manufacturing Company	December 10, 1943

[fols. 93-94] [File endorsement omitted]

IN DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF NEW YORK

Civil No. 32-310

[Title omitted]

DEFENDANTS' ADMISSIONS—Filed June 10, 1946

SIRS:

Please Take Notice that the defendants in the above-entitled action hereby admit the allegations contained in Paragraphs No. 1, No. 3 and No. 4 of plaintiff's request for admissions under Rule 36 of the Rules of Civil Procedure, dated May 21, 1946.

Defendants deny the allegation contained in Paragraph No. 2 thereof, except that they admit that the defendant, International Salt Company, Incorporated, causes to be manufactured the Saltomat Automatic Salt Depositor under U. S. Letters Patent No. 2308188 issued January 12, 1943.

The foregoing admissions are made by defendants pursuant to the provisions of Rule 36 of the Rules of Civil Procedure and for the purpose of this action only.

Yours, etc., Putney, Twombly, Hall & Skidmore, by Lemuel Skidmore, Attorneys for Defendants, Office and Post Office Address: 165 Broadway, Borough of Manhattan, New York City.

To: Lawrence S. Apsey, Esq., Special Assistant to the Attorney-General, Maurice Godin, Esq., Special Attorney, 30 Broad Street, New York, N. Y.

[fol. 95] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

NOTICE OF MOTION FOR SUMMARY JUDGMENT—Filed November 21, 1946

To: Putney, Twombly, Hall & Skidmore, 165 Broadway, New York 6, New York.

Please take notice that on the 30th day of July 1946, at 10:30 o'clock or as soon thereafter as counsel can be heard, the United States of America, plaintiff, will bring the annexed motion for summary judgment on for hearing before this Court at Room 506, United States Court House, Foley Square, New York, New York.

(S.) Robert C. Barnard, Special Assistant to the Attorney General.

(S.) Wendell Berge, Assistant Attorney General. (S.) J. C. Wilson, Special Assistant to the Attorney General.

Dated: July 2, 1946.

Service acknowledged and copy received this —day of July, 1946.

Putney, Twombly, Hall and Skidmore, Attorneys for Defendant, International Salt. Co., Inc.

[fols. 96-97] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

MOTION FOR SUMMARY JUDGMENT

The United States of America, Plaintiff, by its attorneys, acting pursuant to Rule 56 of the Federal Rules of Civil Procedure, moves this Court for a summary judgment in favor of the United States on the ground that the pleadings and the admissions by the defendant International Salt Company, Incorporated on file in this action establish that there is no genuine issue as to any material fact, and that

on the undisputed facts the United States is entitled as a matter of law to the judgment for which it moves herein.

Dated: July 2, 1946.

(S.) Robert C. Barnard, Special Assistant to the Attorney General.

(S.) Wendell Berge, Assistant Attorney General. (S.) J. C. Wilson, Special Assistant to the Attorney General.

[fols. 98-99] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

STIPULATION DISMISSING COMPLAINT AS TO THE DEFENDANTS EDWARD L. FULLER AND HERVEY J. OSBORN—Filed January 20, 1947

The parties hereby stipulate and agree that the complaint be dismissed without prejudice as to the defendants Edward L. Fuller and Hervey J. Osborn.

(S.) Putney, Twombly, Hall & Skidmore, Attorneys for the Defendants. (S.) James C. Wilson, Special Assistant to the Attorney General.

Date 1/17/47.

[File endorsement omitted.]

[fol. 100] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

Civ. 32-310

UNITED STATES OF AMERICA, Plaintiff,

against

INTERNATIONAL SALT COMPANY INCOPORATED, et al., Defendants

Appearances:

Robert C. Barnard, Esq., Spec. Asst. to Atty. Gen., Atty. for United States. Wendell Berge, Asst. Atty. Gen. Jas. C. Wilson, Spec. Asst. to Atty. Gen.

Butney, Twombly, Hall & Skidmore, Esqs., Attorneys for Defts. Lemuel Skidmore, Esq., Howard F. Ordman, Esq., of Counsel.

OPINION—Filed November 21, 1946

RIFKIND, J.:

Plaintiff has moved for summary judgment (R. R. C. P., Rule 56; *United States* v. *Associated Press*, S. D. N. Y., 1943, 52 Fed. Supp. 362, aff. 326 U. S. 1) against the corporate defendant only, on the ground that the pleadings and admissions of the defendant show absence of any genuine issue as to any material fact and that plaintiff is entitled to a judgment as a matter of law. No affidavits have been submitted by either party.

[fol. 101] This is a civil action brought pursuant to Sec. 4 of the Sherman Act, 15 U. S. C. A. 4 and Sec. 15 of the Clayton Act, 15 U. S. C. A. 25, to enjoin defendant from carrying out agreements in alleged violation of Sec. 1 of the Sherman Act, 15 U. S. C. A. 1 [1] and Sec. 3 of the Clayton Act, 15 U. S. C. A. 14.[2]

---

[1] The relevant portion of §1 of the Sherman Act provides, "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal: * * *".

[2] Section 3 of the Clayton Act provides, "It shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies, or other commodities, whether patented or unpatented, for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies, or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agree-

Defendant International Salt Company, Inc. (hereinafter referred to as defendant) is the largest producer of salt for industrial uses in the United States. It is engaged in the business of manufacturing and supplying salt for industrial, agricultural and home purposes. It is also engaged in the manufacture and distribution of a machine known as the "Lixator", which is manufactured by the defendant under patents owned by it. Defendant is also engaged in the distribution of a machine known as the "Saltomat", which defendant causes to be manufactured under a patent owned by it.

The Lixator dissolves rock salt, a raw material sold by defendant and other companies, into a salt brine solution. This brine is an essential part of the manufacturing processes of many industries, such as meat packing, refrigeration, laundering. The Saltomat is a machine used to inject a salt tablet of uniform quantity into canned products during the process of canning.

Defendant's business is interstate. In 1944, defendant sold approximately 119,000 tons of salt, having a value of [fol. 102] approximately $500,000 for use with one or the other of the machines mentioned. Salt in many respects similar to that made and sold by the defendant is and has been sold by other companies in competition with the salt and salt tablets distributed by the defendant.

During the past three years, defendant has, and still is, engaged in entering into lease agreements with various persons for the use of the Lixator. There are in effect 840 lease agreements, each lease covering one Lixator machine. Of these 840 leases, 790 were made on the defendant's standard form of agreement. The remaining 50 vary in one or more respects.

The form contract for the Lixator contains a clause which reads as follows:

> "It is further mutually agreed that the said Lixate Process Dissolver shall be installed by and at the expense of said Lessee and shall be maintained and kept in repair during the term of this lease by and at the expense of said Lessee; that the said Lixate Process

---

ment, or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce."

Dissolver shall be used for dissolving and converting into brine only those grades of rock salt purchased by the Lessee from the Lessor at prices and upon terms and conditions hereafter agreed upon, provided:

"If at any time during the term of this lease a general reduction in price of grade of salt suitable for use in the said Lixate Process Dissolver shall be made, said Lessee shall give said Lessor an opportunity to provide a competitive grade of salt at any such competitive price quoted, and in case said Lessor shall fail or be unable to do so, said Lessee, upon continued payments [fol. 103] of the rental herein agreed upon, shall have the privilege of continued use of the said equipment with salt purchased in the open market, until such time as said Lessor shall furnish a suitable grade of salt at the said competitive price."

It further provides as follows:

"Should said Lessee fail to pay promptly the aforesaid rental, or shall at any time discontinue purchasing its requirement of salt from said Lessor, or otherwise breach any of the terms and conditions of this lease, said Lessor shall have the right, upon 30 days' written notice of intention to do so, to remove the said Lixate Process Dissolver from the possession of said Lessee."

Concerning the 50 Lixator agreements which differ from the printed form, the variations are set forth in the margin.[3]

During the past two years defendant has, and still is, engaged in entering into lease agreements with various persons for the use of the Saltomat. There are in effect 73 lease agreements covering 96 Saltomat machines. Each

[3] All but 4 leases contain tying clauses, requiring the purchase of some or all of the rock salt from the lessor. Three leases permit the lessee to buy 50% of its salt requirements from defendant's competitors. Five leases with Armour & Co. provide that Armour & Co. may use salt produced by itself. In most instances the modifications are of little or no importance, for example, variances relating to additional facilities furnished by the lessor, and minor variations in rental terms or cancellation terms.

lease was entered into on defendant's printed form, which likewise contains a clause requiring the lessee to purchase defendant's salt tablets for use in the machine. The text of that clause is as follows:

> "It is further mutually agreed that the said Salt Tablet Depositor(s) shall be installed and maintained in good condition during the term of this lease; that the said Salt Tablet Depositor(s) shall be used only in conjunction with Salt Tablets sold or manufactured by the Lessor, and that the Lessee shall purchase from [fol. 104] the Lessor, or its agent, Salt Tablets for use in the Salt Tablet Depositor(s) at prices and upon terms and conditions hereinafter agreed upon, Provided: If, at any time during the term of this lease, a general reduction in Lessor's price of Salt Tablets suitable for use in the Depositor(s) shall be made, said Lessor shall provide said Lessee with Salt Tablets at a like price."

The lease further provides:

> "• • • should Lessee fail to pay promptly the aforesaid rental, or at any time discontinue purchasing its requirements of Salt Tablets for said Salt Tablet Depositor(s) from said Lessor, or its agent, or otherwise breach any of the terms and conditions of this lease, said Lessor shall have the right, upon 10 days' written notice of intention to do so, to remove the said Salt Tablet Depositor(s) from the premises and/or possession of said Lessee."

The rock salt and salt tablets sold by defendant are unpatented articles.

Defendant denies, and for the purposes of this motion for summary judgment I must accept its denial as fact, that it has refused to grant licenses or other rights to other persons free of the aforesaid restrictions. It admits that it has in some instances refused to sell the machine outright. Defendant, however, asserts in its affirmative defense that it has in some instances sold Lixators outright to customers who objected to leasing the machine, and that in such cases it imposed no restrictions concerning the source from which the rock salt for use in the machine

was to be purchased. The answer also asserts that in no [fol. 105] case has defendant at any time refused to install either a Lixator or a Saltomat machine on the ground that the customer objected to the defendant's restrictions concerning the purchase of salt from the defendant.

This case presents for decision the precise question which the Supreme Court found it unnecessary to decide in *Morton Salt Co. v. G. S. Suppiger Co.*, 1942, 314 U. S. 488, reh. den. 315 U. S. 826. In that case the court allowed a summary judgment dismissing a suit for patent infringement where it appeared that the patent owner had annexed to the patent license an obligation on the part of the licensee to buy from the patent owner unpatented salt tablets for use with the patented dispensing machine. The court said (at page 494):

> "It is unnecessary to decide whether respondent has violated the Clayton Act, for we conclude that in any event the maintenance of the present suit to restrain petitioner's manufacture or sale of the alleged infringing machines is contrary to public policy and that the district court rightly dismissed the complaint for want of equity."

Interstitially we find in that opinion the cells from which the decision of the instant case could grow. The court spoke of "making use of [plaintiff's] patent monopoly to restrain competition in the marketing of unpatented articles, salt tablets • • • and • • • aiding in the creation of a limited monopoly in the tablets not within that granted by the patent" (p. 491), and also said that "courts, [fol. 106] and especially courts of equity, may appropriately withhold their aid where the plaintiff is using the right asserted contrary to the public interest" (p. 492). I am unable to bring to mind any public interest which the court could have had in contemplation other than the public interest in the maintenance of a system of free competition. The misconduct which disqualified the plaintiff in the *Morton* case from enforcing his patent right was interference with the system of free competition. True enough the disposition made by the court of the case rendered it unnecessary for it to consider whether the restraint upon trade was undue or unreasonable or whether the lessening

of competition was substantial. But clearly a petty or merely nominal offense against the public interest would hardly justify the court in withholding its aid to the holder of the patent. This reasoning is not dispositive, it nevertheless points a direction. In that direction the court has moved. In *Mercoid Cprp. v. Mid-Continent Investment Co.*, 1944, 320 U. S. 661, the court not only extended the doctrine of the *Morton* case to a contributory infringer, but also used language much more explicitly expressive of its intention to go forward in the direction but faintly suggested by the *Morton* case. It said:

> [fol. 107] "It is the public interest which is dominant in the patent system. (p. 665) • • • The fact that the patentee has the power to refuse a license does not enable him to enlarge the monopoly of the patent by the expedient of attaching conditions to its use. (p. 666) • • • The patent is employed to protect the market for a device on which no patent has been granted. But for the patent such restraint on trade would *plainly run afoul of the anti-trust laws.* If the restraint is lawful because of the patent, the patent will have been expanded by contract. • • • Such a vast power 'to multiply monopolies' at the will of the patentee • • • would carve out exceptions to the anti-trust laws which Congress has not sanctioned. (p. 667) • • • Should such a decree [an injunction against infringement] be entered, the Court would be placing its imprimatur on a scheme which involves a misuse of the patent privilege and *a violation of the anti-trust laws.* (p. 670)". [Italics supplied.]

True, the *Mercoid* decision was not reached upon a motion for summary judgment, but the facts of record in that case show nothing more than is here admitted on motion.

In the light of these general principles the problem presented by the instant case must be decided. The defendant here urges the impropriety of summary judgment because of the presence of two triable issues, namely, (1) whether the Lixator and Saltomat leases do in fact substantially lessen competition or tend to create a monopoly in salt, and, (2) whether the restraint of trade affected by these leases, if any, is an unreasonable restraint.

This contention is confronted by two possible answers. The first is that the conduct complained of is unlawful *per se*.

> *Fashion Originators Guild of America v. Federal Trade Commission*, C. C. A. 2, 1940, 114 Fed. 2d 80, 85 (footnote (4)), affd. 1941, 312 U. S. 457.

The other is that a restraint which affects 900 business [fol. 108] units in a business aggregating $500,000 per annum is, without more, undue and unreasonable, and the lessening of competition on its face substantial.

Were it not for *Federal Trade Commission v. Sinclair Refining Co.*, 1923, 261 U. S. 463 and *Pick Mfg. Co. v. General Motors Corp.*, 1936, 299 U. S. 3, aff'g. 80 Fed. 2d 641, I should rest this case on the first answer. In this case, like in the cited cases, the lessees were apparently free to obtain competitive machines and equipment to handle the salt and salt tablets, and thereby be in a position to purchase salt from the defendant's competitors. At least I must assume that such is the fact in the absence of anything in the pleadings to contradict it. And while it is true that the holding of the *Sinclair* case and the *Pick* case has been severely restricted (*International Business Mach. Corp., v. United States*, 1936, 298 U. S. 131, 135; *Judson L. Thompson Mfg. Co. v. Federal Trade Comm.*, C. C. A. 1, 1945, 150 Fed. 2d 952, 956-7, cert. den. 326 U. S. 776; *Oxford Varnish Corp. v. Ault & Wiborg Corp.*, C. C. A. 6, 1936, 83 Fed. 2d 764, 767, reh. den. 85 Fed. 2d 390), nevertheless I prefer to rest the decision in this case upon the second answer. The intent and object of the Lixator and Saltomat leases were manifestly to exclude defendant's competitors from at least one portion of the business of the 900 lessees. Nor do I think such a decision foreclosed by the *Sinclair* or the *Pick* case. [fol. 109] In the *Sinclair* case the pumps did not appear

---

[1] "Price fixing is not, however, the only means unlawful per se; the interest of the consumer is not all that determines the 'reasonableness' of a contract 'in restraint of trade'. It is also unlawful to exclude from the market any of those who supply it—assuming that there is no independent reason by virtue of their conduct to justify their exclusion—and it is no excuse for doing so that their exclusion will result in benefits to consumers, or to the producers who remain."

to be patented. Here the machines are patented. Presumably, therefore, the identical machines cannot be procured elsewhere. Secondly, in the *Sinclair* case, the pumps were the vendee's means of resale. There was, therefore, an inducement to obtain additional equipment to satisfy customers' demand for other gasoline. Here the product is unknown to the consumer and the inducement is, therefore, lacking. Third, although unstated in the *Sinclair* case, it is nevertheless obvious that to allow a gasoline dealer to serve the public, through a Sinclair pump, gasoline other than Sinclair's would amount to cooperation in a fraud. No such ingredient is present in the instant case. *Signode Steel Strapping Co. v. Federal Trade Comm.*, C. C. A. 4, 1942, 132 Fed. 2d 48, 53.

In the *Pick* case an automobile manufacturer required a dealer by contract to agree not to sell or use in repair of automobiles made by that manufacturer, used parts or parts not manufactured or authorized by the manufacturer. The manufacturer gave to the purchasers of these cars, that is, to the ultimate consumers, a warranty against defect in material and workmanship for a specified period. The replacements were operating parts of a complex mechanism, the origin of which is inevitably attributed to the manufacturer and the failure of which is inevitably placed at his door, with resulting impairment of good will and damage to the reputation of his product. *Oxford Varnish Corp. v.* [fol. 110] *Ault & Wiborg Corp.*, supra at 767 (83 Fed. 2d).

In the instant case the public is totally unaware of either the use of salt in the product or of the source of any salt and the means by which it was acquired. The preservation of the good will of the purchasing public is not at all involved.

Moreover, an analysis of the prices reflected in the 50 Lixator agreements which have been submitted, shows a nominal annual rental of $1 in 13 instances, and no rental other than "good and valuable consideration" in 3 instances. In all Saltomat leases there is provision that, after the lapse of five years, rental shall be at the nominal amount of $1. The same is true in all Lixator leases, with the exception of six instances. In these cases, therefore, the only valuable consideration which the lessor obtained is the lessee's promise to buy unpatented salt from the lessor. In other words, the patent is being used solely to restrain competition.

It appears, therefore, that a violation of Sec. 1 of the Sherman Act and of Sec. 3 of the Clayton Act has been made out.

International Business Machines Corp. v. United States, supra, at p. 140;
Radio Corporation of America v. Lord, C. C. A. 3, 1928, 28 Fed. 2d 257, 260 cert. den. 278 U. S. 648;
Oxford Varnish Corp. v. Ault & Wiborg Corp., supra;
Signode Steel Strapping Co. v. Federal Trade Comm., supra.

[fol. 111] There remains for consideration only the affirmative defense, unsupported by affidavit submitted in opposition to the motion. Therein the defendant alleges that by leasing the machines, instead of selling them, defendant was able to require the machines to be kept in good repair, thereby insuring to the lessee a satisfactory operation of the machine and protecting the good will of the defendant with its customers and the trade. The protection of good will of the lessor is insufficient as a defense where the substantial benefit of the tying clause to the lessor is in the elimination of competition and where it does not appear that the protection of good will cannot be achieved by methods that do not tend to monopoly and are not otherwise unlawful.

International Business Machines Corp. v. U. S., supra at p. 138.

Defendant further alleges in its affirmative defense that in entering into the lease it had no intention to create a monopoly or to restrain trade, but only to secure for itself the opportunity to meet competitive prices. Manifestly, defendant's subjective state of mind cannot affect the determination of the present motion.

The answer further alleges that defendant has in many instances sold the Lixators outright where a customer has objected to leasing the machine, and that defendant has [fol. 112] never refused to install a machine because the customer objected to sign one of the standard forms. In a suit to enjoin the use of a lease which is violative of the Clayton Act, it is no defense that an alternative form of

lease claimed to be unobjectionable was offered to the lessee.

United Shoe Machinery Corp., v. U. S., 1922, 258 U. S. 451, 464, reh. den. 259 U. S. 575.

Defendant's allegation, unsupported by affidavit, that in many instances lessees purchased salt and salt tablets from sources other than defendant, and that in such instances the defendant has made no effort to enforce the covenants of the lease, is no defense in an action of this character. The power to do so is ever present.

United Shoe Machinery Corp v. U. S., supra, at p. 458.

Finally, it is alleged by defendant that to insure the satisfactory operation of the machine, and for the protection of its good will, it is necessary to use salt and salt tablets of a specified grade and content which defendant's product alone is sure to offer. This defense is likewise insufficient even if the allegation were true, which is doubtful.

International Business Machines Corp. v. U. S., supra, at p. 138;

Judson L. Thomson Mfg. Co. v. Federal Trade Commission, supra, at p. 957.

[fols. 113-114] The motion for summary judgment is granted.

Defendant calls attention to the nature of the relief demanded by plaintiff in its prayer for judgment and argues that in any event plaintiff is not entitled to all of the relief it seeks. No decision is now made with respect to it. Further hearing will be had concerning the terms of the decree to be entered herein.

Dated, New York, N. Y., November 20, 1946.

Simon H. Rifkind, U. S. D. J.

[fols. 115-116] [File endorsement omitted.]

[fol. 117] Copy

IN THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF NEW YORK

Civil No. 32-310

UNITED STATES OF AMERICA, Plaintiff,

v.

INTERNATIONAL SALT COMPANY, INCORPORATED, et al.

JUDGMENT—Filed December 27, 1946

This cause having come on for a hearing before the Court upon a motion by the plaintiff for a summary judgment against defendant International Salt Company, Incorporated, counsel for the parties having been heard and the Court having determined, upon consideration of the pleadings and admissions on file, that there is no genuine issue between the parties as to any material fact, and the Court having filed its opinion herein on the 20th day of November, 1946, granting the motion for summary judgment.

It is hereby ordered, adjudged, and decreed:

I

The Court has jurisdiction of the subject matter hereof and of the parties hereto.

II

The defendant International Salt Company, Incorporated (referred to hereafter as International Salt) has entered into contracts in restraint of, and has used patents and patent rights owned or controlled by defendant International Salt disclosing an invention used or useful in the Lixator or Saltomat machines or any machine performing a function similar to either of them, to restrain interstate trade and commerce in rock salt and salt tablets (referred [fol. 118] to hereinafter as "salt") in violation of section 1 of the Act of Congress aproved July 2, 1890, as amended, commonly known as the Sherman Act, 15 U. S. C. Sec. 1;

and section 3 of the Act of Congress of October 15, 1914, as amended, commonly known as the Clayton Act, 15 U. S. C. Sec. 14.

III

All the provisions of the lease agreements for the lease of machines referred to as the Lixator and the Saltomat which contain any condition, agreement, or understanding that the lessee shall not use or deal in salt of a competitor or competitors of defendant International Salt are hereby adjudged unlawful and declared illegal and void.

IV

The defendant International Salt, its directors, officers, agents, employees, representatives, successors, subsidiaries, assignees of the rights of the defendant corporation under any lease of any machine referred to in subparagraph (b) hereof, and any person acting or claiming to act for or on behalf of defendant are hereby perpetually enjoined:

(a) From enforcing or attempting to enforce any provision of the agreements adjudged unlawful in paragraph III hereof, and from doing any further acts thereunder.

(b) From entering into any contract, agreement or lease for machines referred to as the Lixator or Saltomat or any machine performing the same or similar functions for use or resale within the United States, or any place under the jurisdiction of the United States, or from fixing a price, rent, or fee charged therefor, or discount from or rebate on such price, rent or fee, upon the condition, agreement, or understanding, directly or indirectly, that the lessee, [fol. 119] purchaser, or user thereof shall not purchase, use or deal in salt of a competitor or competitors of defendant International Salt.

(c) From engaging in or participating in contracts, agreements, or understandings having the purpose or effect of continuing, reviving, or renewing any agreement, condition or understanding adjudged to be unlawful by this judgment.

(d) From removing said machines from the premises of any lessee, purchaser or user thereof because such lessee, purchaser or user purchases, uses or deals in salt manu-

factured or sold by any person, firm or corporation other than defendant International Salt.

(e) From using patents or patent rights owned or controlled by the defendant embodying inventions used or useful in the Lixator or Saltomat machines or any machine performing a function similar to either of them to control, restrict or limit in any way the purchase of salt from any person, firm or corporation other than defendant International Salt.

(f) From instituting or threatening to institute any action, suit or proceeding for infringement or to collect charges, damages, compensation or royalties alleged to have occurred, or accrued, prior to the date of the entry of this judgment, under any United States patents owned or controlled by the defendant disclosing an invention used or useful in the Lixator or Saltomat machines or any machine performing a function similar to either of them.

V

Within sixty days after the date of this judgment defendant International Salt shall mail a copy of this judgment to each person with whom it has a lease agreement relating to a Lixator or Saltomat and shall file with this Court proof of compliance with this paragraph.

[fol. 120] VI

Defendant International Salt is directed to offer to lease or sell or license the use of the Lixator or Saltomat Machines, or any other machine which is then being or about to be offered or shall have been offered by such defendant in the United States embodying inventions covered by any of the patents referred to in paragraph II hereof, to any applicant on non-discriminatory terms and conditions; *provided* that

(a) A machine or machines is or are available for such purposes and

(b) Defendant shall not be required to make such offer unless it is offering, about to offer, or has offered such machines for lease or sale or license within the United States and at any time the defendant may discontinue the business of renting or selling or licensing the use of such machines; and

(c) Such sale or lease or license is not required to be made without cash payment or security to any person not having proper credit rating, and

(d) The rental or sale price or license royalty may differ as to different types and sizes of machines and from time to time so long as the rental or sale price or royalty at any one time is uniform as to each size or type of machine. The terms of this paragraph shall apply to all future contracts and modifications of existing contracts. Any person with whom defendant International Salt now has a lease agreement relating to the Lixator or Saltomat machines may elect to retain his rights under the existing lease or to enter into a lease or sale or license contract with defendant International Salt in accordance with the provisions of this paragraph.

[fol. 121-122] VII

Judgment is entered against the defendant for all costs to be taxed in this proceeding.

VIII

Jurisdiction of this cause is retained for the purpose of enabling any of the parties to this judgment to apply to the court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this judgment, for the amendment, modifications or termination of any of the provisions thereof, for the enforcement of compliance therewith and for the punishment of violations thereof.

Simon H. Rifkind, United States District Judge.

Dated: Dec. 27, 1946.

Judgment Rendered. William V. Connell. Dec. 27, 1946.

[fol. 123] In the District Court of the United States

[Title omitted]

Assignment of Errors—Filed January 24, 1947

Defendant-Appellant, International Salt Company, Incorporated, files the following assignment of errors upon which it will rely on its appeal to the Supreme Court of

the United States from the judgment of this court entered the 27th day of December, 1946.

The Court erred:

1. In granting the plaintiff's motion for summary judgment.

2. In holding that this defendant has entered into contracts in restraint of, and has used patents and patent rights owned or controlled by it, disclosing an invention used or useful in the Lixator or Saltomat machines or any similar machines, to restrain interstate trade and commerce in rock salt and salt tablets in violation of Title 15 U. S. C. section 1 and 15 U. S. C. section 14.

3. In holding that all the provisions of the leases of the Lixator and Saltomat machines containing provisions against the lessees' using or dealing in salt of a competitor or competitors of this defendant are unlawful, illegal and void.

[fol. 124] 4. In perpetually enjoining this defendant from enforcing or attempting to enforce any provision of the agreements adjudged unlawful, or from acting thereunder.

5. In perpetually enjoining this defendant from entering into any contract, agreement or lease for Lixator or Saltomat or similar machines for use or resale within the jurisdiction of the United States, or from fixing a price, rent or fee therefor, or discount from or rebate on such price, rent or fee upon the condition, agreement or understanding, directly or indirectly, that the lessee, purchaser or user thereof shall not purchase, use or deal in salt of a competitor or competitors of this defendant.

6. In perpetually restraining this defendant from engaging in or participating in contracts, agreements or understandings for the purpose or effect of continuing, reviving or renewing any agreement adjudged unlawful by the judgment.

7. In perpetually restraining this defendant from removing the machines from the premises of any lessee, purchaser or user because such lessee, purchaser or user purchases, uses or deals in salt manufactured or sold by anyone other than this defendant.

8. In perpetually enjoining this defendant from using patents or patent rights covering inventions used or useful in the Lixator and Saltomat or similar machines owned or controlled by this defendant to control, restrict or limit in any way the purchase of salt from anyone other than this defendant.

9. In perpetually enjoining this defendant from instituting or threatening to institute any action, suit or proceeding for infringement or to collect charges, damages, compensation or royalties alleged to have occurred or accrued, [fols. 125-126] prior to the date of the entry of the judgment, under any United States patents owned or controlled by the defendant disclosing an invention used or useful in the Lixator or Saltomat machines or any machine performing a function similar to either of them.

10. In directing this defendant within sixty (60) days after the date of the judgment to mail a copy thereof to each person having a lease agreement covering a Lixator or Saltomat and to file proof of such mailing with this court.

11. In directing this defendant to offer to lease or sell or license the use of the Lixator or Saltomat or similar machine to any applicant on non-discriminatory terms and conditions and subject to the provisions contained in paragraph "VI" of the judgment.

12. In entering judgment against this defendant for all the costs of the action.

Wherefore, this defendant prays that the said judgment be reversed and a judgment entered in favor of this defendant and that this defendant have the costs of this appeal.

Putney, Twombly, Hall & Skidmore, By (S.) Lemuel Skidmore, Attorneys for Defendant-Appellant, International Salt Company, Incorporated.

[fols. 127-128] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

PETITION FOR APPEAL—Filed January 24, 1947

The defendant, International Salt Company, Incorporated, feeling itself aggrieved by the final judgment of the court entered herein on the 27th day of December, 1946, for the reasons set forth in its assignment of errors which is filed herein, hereby prays an appeal from such judgment to the Supreme Court of the United States, and further prays that an order be entered fixing the amount of bond and security to be given by the defendant as appellant and conditioned as the law directs and that a transcript of the record on appeal be certified and sent to the Supreme Court of the United States.

Defendant further prays that enforcement of such final judgment be stayed pending the said appeal and for that purpose prays the court to enter an order fixing the amount of bond and security to be given by the defendant as appellant conditioned that appellant shall prosecute its appeal to effect and answer all damages and costs if it fails to make its appeal good.

Dated January 22, 1947.

Putney, Twombly, Hall & Skidmore, By (S.) Lemuel Skidmore, Attorneys for Defendant-Appellant, International Salt Company, Incorporated.

[fols. 129-130] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING APPEAL—Filed January 24, 1947

It appearing to the Court that the defendant, International Salt Company, Incorporated, has filed its petition for appeal to the Supreme Court of the United States and has filed therewith its assignment of errors and also its statement as to the jurisdiction of the Supreme Court of the United States, as required by Rule 12 of the Rules of the Supreme Court, duly disclosing that the Supreme Court of

the United States has jurisdiction upon appeal to review the final judgment in question, it is

Ordered that the appeal prayed for be and the same hereby is allowed and granted to the Supreme Court of the United States from the final judgment rendered in this case on the 27th day of December, 1946, and it is further

Ordered that enforcement of such final judgment be stayed pending the disposition of said appeal, such stay to be effective upon the filing by appellant and approval by this Court of a bond in the sum of Two hundred fifty Dollars ($250) with sufficient sureties, conditioned that it as appellant will prosecute its appeal to effect, and answer all damages by reason of delay and costs if it fails to make its appeal good.

Dated, January 23rd, 1947.

Hulbert, U. S. D. J.

[fols. 131-132] Citation in usual form showing service on J. C. Wilson, filed Jan. 29, 1947, omitted in printing.

[fols. 133-134] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 135] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

PRAECIPE FOR TRANSCRIPT OF RECORD—Filed March 4, 1947

To the Clerk of the United States District Court:

Please prepare a transcript of the record in the above-entitled cause in the matter of the appeal herein and include in said transcript in the order given below the following papers:

1. The summons, dated July 26, 1945.
2. The bill of complaint and exhibits attached thereto.
3. Defendant's answer.
4. Plaintiff's request for admissions under Rule 36, dated May 21, 1946, together with exhibits attached thereto.
5. Defendant's notice of admissions pursuant to Rule 36.
6. Notice of motion and motion for summary judgment, dated July 2, 1946.

7. Opinion.
8. Final judgment proposed by plaintiff.
9. Final judgment, entered December 27, 1946.
10. Stipulation dismissing complaint as to defendants Edward L. Fuller and Hervey J. Osborn, dated January 17, 1947.
11. Plaintiff's petition for appeal herein.
12. Plaintiff's assignment of errors.
13. Plaintiff's statement as to jurisdiction.
14. Order allowing appeal dated February 25th 1947.
15. Citation.
16. Statement directing attention to rule 12(3) of the Rules of the Supreme Court.
[fol. 136-140] 17. Notice of serving appeal papers.
18. This praecipe.

Wendell Berge, Assistant Attorney General, Robert C. Barnard, Special Assistant to the Attorney General.

This 4th day of March, 1947.

Service acknowledged and copy received this 4th day of March, 1947.

Putney, Twombly, Hall & Skidmore, Attorneys for International Salt Company, Inc.

[fol. 141] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed February 25, 1947

The United States of America, plaintiff in the above-entitled cause, considering itself aggrieved by the final judgment of this Court entered on the twenty-seventh day of December, 1946, does hereby pray an appeal from said final judgment to the Supreme Court of the United States. Pursuant to Rule 12 of the Rules of the Supreme Court plaintiff presents to this Court herewith a statement showing the basis of jurisdiction of the Supreme Court, to entertain an appeal in this cause.

The particulars wherein the plaintiff considers the judgment erroneous are set forth in the assignment of errors and prayer for reversal accompanying this petition and to which reference is hereby made.

Plaintiff prays that this appeal may be allowed and that citation be issued as provided by law, and that a transcript of the record, proceedings, and documents upon which said final judgment was based, duly authenticated, be sent to the Supreme Court of the United States under the rules of said Court in such cases made and provided.

Wendell Berge, Assistant Attorney General; Robert C. Barnard, Special Assistant to the Attorney General.

Dated this 25th day of February, 1947.

[fol. 142] IN UNITED STATES DISTRICT COURT
[Title omitted]

ASSIGNMENT OF ERRORS AND PRAYER FOR REVERSAL—Filed February 25, 1947

The United States of America, plaintiff in the above-entitled cause, in connection with its petition for appeal to the Supreme Court of the United States, hereby assigns error to the record and proceedings and the entry of the final decree in the district court on December 27, 1946, in the above-entitled cause, and says that in the entry of the final decree the district court committed error to the prejudice of the plaintiff in the following particulars:

1. The court erred in failing to grant the plaintiff relief adequate to dissipate the effects of the violations of law which it found.

2. The court erred in failing to enjoin defendant from enforcing the patents, disclosing an invention used or useful in defendant's Lixator and Saltomat machines, improperly used by defendant in violation of the law.

3. The court erred in failing to provide in the judgment entered that the Attorney General or his authorized representatives might, for the purpose of assuring compliance with the court's judgment and subject to appropriate safeguards, inspect records and interview employees of the defendant.

4. The court erred in failing to hold that improper use of patents to control competition in unpatented products through leases containing tying clauses was unlawful *per se*.

5. The court erred in failing to grant the plaintiff the [fol. 143] relief to which it is entitled.

Wherefore, plaintiff prays that the final decree of the district court may be reversed to the extent that it is inconsistent with the errors herein assigned by the plaintiff, and for such other and fit relief as the court may deem just and proper.

Wendell Berge, Assistant Attorney General. Robert C. Barnard, Special Assistant to the Attorney General.

Dated this 25 day of February, 1947.

[fol. 144] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL

In the above-entitled cause the United States of America, plaintiff, having made and filed its petition praying an appeal to the Supreme Court of the United States from the final judgment of this Court in this cause entered on the twenty-seventh day of December, 1946, and having also made and filed its petition for appeal, assignment of errors and prayer for reversal, and statement of jurisdiction, and having in all respects conformed to the statutes and rules in such cases made and provided,

It is therefore ordered and adjudged that the appeal be and the same is hereby allowed as prayed for.

Simon H. Rifkind, United States District Judge.

Dated this 25th day of February, 1947.

[fols. 145-146] Citation, in usual form, showing service on Counsel for defendants, filed Feb. 26, 1947, omitted in printing.

[fol. 147] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 148] SUPREME COURT OF THE UNITED STATES

INTERNATIONAL SALT COMPANY, INCORPORATED, Defendant-Appellant,

v.

UNITED STATES OF AMERICA, Plaintiff-Appellee

STATEMENT OF POINTS ON WHICH DEFENDANT-APPELLANT INTENDS TO RELY AND DESIGNATION OF PARTS OF RECORD—Filed March 5, 1947

Pursuant to Rule 13, Paragraph 9, of the Revised Rules of this Court, defendant-appellant states that it intends to rely upon all the points in its Assignment of Errors.

Defendant-Appellant deems the entire record as filed in the above entitled cause necessary for consideration of the points relied upon, except the fifty (50) photostatic copies of leases annexed to the plaintiff-appellee's Request for Admissions under Rule 36 of the Rules of Civil Procedure, dated May 21, 1946.

Dated: March 4, 1947.

Henry B. Twombly, Counsel for Defendant-Appellant.

The undersigned hereby admits service of a copy of the foregoing statement of points to be relied on and parts of the record to be printed, this 4th day of March, 1947.

Wendell Berge —, Atty. for Plaintiff-Appellee.

[fol. 149] [File endorsement omitted.]

[fols. 150-151] IN THE SUPREME COURT OF THE UNITED STATES

INTERNATIONAL SALT COMPANY, INCORPORATED, et al., Appellant,

v.

UNITED STATES OF AMERICA

STIPULATION AS TO PRINTING OF RECORD—Filed March 13, 1947

It is hereby stipulated by and between counsel for the respective parties in the above-entitled cause that the fifty photostatic copies of leases annexed to plaintiff-appellee's

request for admissions under Rule 36 of the Rules of Civil Procedure, dated May 21, 1946, introduced in the course of the proceedings before the District Court and which have been filed in this Court as part of the record in the above-entitled cause, be not printed but that any party be permitted to refer to, quote from, or reproduce any of said exhibits in whole or in part in its briefs or oral argument before this Court, as fully as though they were included in the printed record in this Court.

George T. Washington, Acting Solicitor General.

Dated: March 6, 1947.

Henry B. Twombley, Counsel for International Salt Company, Incorporated.

Date: March 7, 1947.

[fol. 152] [File endorsement omitted.]

[fol. 153] IN THE SUPREME COURT OF THE UNITED STATES

THE UNITED STATES OF AMERICA, Appellant,

v.

INTERNATIONAL SALT COMPANY, INCORPORATED, et al.

On Appeal from the United States District Court for the Southern District of New York

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF PARTS OF THE RECORD NECESSARY FOR CONSIDERATION THEREOF—Filed April 15, 1947

1. Now comes the Appellant in the above cause and for its statement of points upon which it intends to rely in its appeal in this Court adopts the points contained in its Assignment of Errors heretofore filed herein.

2. Appelee herein as Appellant in No. 1076, this Term, International Salt Company v. United States of America, has heretofore designated for printing by the Clerk of this Court the entire record, as filed pursuant to its praecipe to the Clerk of the United States District Court for the

Southern District of New York, except the fifty photostatic copies of leases annexed to the Request for Admissions made by the appellant herein under Rule 36 of the Rules of Civil Procedure, dated May 21, 1946. This appeal may be heard on the record so designated, plus the following which is hereby designated for printing by the Clerk of this Court:

1. Final judgment proposed by appellant (Item 8 of its praecipe to the Clerk of the United States District Court).

[fol. 154] 2. Appellant's petition for appeal herein.

3. Appellant's assignment of errors.

4. Order allowing appeal dated February 25, 1947.

5. Citation.

6. Statement directing attention to Rule 12(3) of the Rules of the Supreme Court.

7. Notice of serving appeal papers.

8. Praecipe.

9. This designation.

George T. Washington, Acting Solicitor General.

Dated April 14, 1947.

[fol. 155] [File endorsement omitted.]

[fol. 156] SUPREME COURT OF THE UNITED STATES

INTERNATIONAL SALT COMPANY, INCORPORTATED, Appellant,

vs.

THE UNITED STATES OF AMERICA; and

THE UNITED STATES OF AMERICA, Appellant,

vs.

INTERNATIONAL SALT COMPANY, INCORPORATED

ORDER NOTING PROBABLE JURISDICTION—April 28, 1947

The statements of jurisdiction in these cases having been submitted and considered by the Court, probable jurisdiction is noted.

Endorsed on cover: File No. 51,940, 52,072. Southern New York, D. C. U. S. Term No. 1076. International Salt Company, Incorporated, Appellant, vs. The United States of America. Term No. 1208. The United States of America, Appellant, vs. International Salt Company, Incorporated. Filed February 28, 1947, April 4, 1947. Term Nos. 1076 O. T. 1946, 1208 O. T. 1946.